

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 SECTION 27A & 20C
LANDLORD AND TENANT ACT 1985: SECTION 24

LON/OOAG/LSC/2008/031

Premises: Provost Court, Eton Road, London NW3 4SR
Applicant: Ms. S.K Allison (Flat 4) & others
Represented by: Ms. S.K. Allison
Respondent: Gauld Properties Limited
Represented by: Mr. A Constad, HML Mandells Limited

CORRECTION NOTICE PURUSANT TO REGULATION 18(7) LEASEHOLD VALUATION TRIBUNALS (PROCEDURE)(ENGLAND) REGS 2003.

Paragraph 25 of the decision:

Delete 'from' and replace with 'and' so that the sentence reads:

"Further, the Tribunal disallowed, as the Respondent agreed, the sum of £76.38 and £88.13 and the Shaw & Co. invoice of £4,021.23".

Chairman:.....

Dated:.....

W. J. Wainwright

17/2/09

IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985; SECTION 27A AND 20C

LANDLORD AND TENANT ACT 1985; SECTION 24

LON/OOAG/LSC/2008/031

Premises: Provost Court, Eton Road, London NW3 4SR

Applicant: Ms. S.K. Allison (Flat 4) & others

Represented by: Ms. S. K. Allison

Respondent: Gauld Properties Limited

Represented by: Mr. A. Constad, Senior Property Manager of HML Mandells Limited, Property and Estate Managers.

Also Present: Mr. P. Singh, Senior Accountant, HML Ltd.
Ms. S. Green, Head of Property Department, HML Mandells Ltd.

Tribunal: Ms. LM Tagliavini, LLM, Dip Law, BA Hons.
Mr. I Thompson, BSc, FRICS
Mrs. L Walter

Hearing Date: 10th & 11th November 2008

1. This is an application for the determination of the reasonableness and liability to pay service charges for the years 2003 to 2008 inclusive. The Applicant also seeks the Tribunal's appointment of a new managing agent (sic). The subject premises are a purpose built block of 24 flats, built circa 1960's comprising six floors plus two new penthouse flats. The property has limited underground parking spaces available to some lessees. By a lease dated 13th May 1988, a term of 99 years was granted with effect from 25th March 1988, at a ground rent of £150 for the first 25 years; £200 per annum for the following 25 years; £250 for the next 25 years and £300 per annum for the remainder of the term.

2. In the application notice dated 25/07/08, the Applicants asserted that they sought a determination specifically on the costs of the lift upgrade and extension to reach the newly built penthouses, and the replacement and resiting of the water tanks, without consultation were in issue. Additionally, concern was voiced as to the operation of the reserve fund, which had been unexpectedly reduced. More specifically the Applicants set out the specific items of service charge disputed in the application for each of the relevant years:

2003: Insurance, repairs and maintenance, professional fees.

2004: Electricity and water lift insurance, pest control, professional fees, repairs and maintenance.

2005: Lift repairs and maintenance; reserve fund expenditure.

2006: Health & Safety charges; entry phone and ground rent creditor.

2007: Repairs and maintenance; agent fees; pest control; water monitor and porter charges not properly calculated.

2008: Repairs and maintenance; Health & Safety; lift maintenance, pest control management fees, insurance, electricity and water, reserve/sinking fund.

It was noted that in a letter dated 26/9/08 the issue of the reserve fund (£20,000) had been resolved to the Applicants' satisfaction.

3. The Applicants also sought the appointment of a new managing agent (sic) pursuant to section 24(1) Landlord and Tenant Act 1985.
4. At the hearing of the application it was brought to the Applicant's attention that their application pursuant to section 24(1) L&T1985 was misconceived, and that the Tribunal only had the power to appoint a manager that was answerable to the Tribunal rather than the lessees themselves. Further, it appeared to the Tribunal that the Applicants had failed to follow any of the statutory procedures in respect of an appointment of a manager. On further consideration of this matter, the Applicants indicated to the Tribunal that they would like this part of the application adjourned so that legal advice could be sought. Having had regard to the applicant's representations, and without opposition from the Respondent the Tribunal adjourned the application made under section 24(1) Landlord and Tent Act 1985 for a period of three months, with the proviso that if the Tribunal heard nothing further the application would automatically be struck out with effect from three months of that decision made on 11/11/08.

5. In evidence, Ms. Alison on behalf of the Applicants, told the Tribunal that they are unsure if the building is insured and wanted proof that it had been insured in the past and that it continued to be insured to date. She accepted that certain works had been carried out in 2003, as she recalled certain section 20 notices being served by Hawksworth, the previous managing agent. The work involved the redecoration of the exterior parts and the communal areas, and although not resident in the block, had heard no complaints about the standard of the works.

6. Ms. Allison stated that although the professional fees for 2003 appeared high, the Applicants were prepared to accept them although had received no reply to their query as to what they were for. Ms. Allison went on to state that she had not seen any bills for the 2004 service charges and was not aware of any communal electricity meters or bills for the communal areas.

7. In 2006, works for the construction of the penthouses were commenced although no payments were required from the long lessees in respect of these works. The lift insurance charge was a new item in 2004 and had come 'out of the blue'.

8. Ms. Allison stated that she considered that there was a high charge made for pest control but was unaware of any pests seen at the property. Again Ms. Allison conceded that the professional fees were probably reasonable. Ms. Allison queried the entry of £6,250 ground rent credit and stated it was unclear what this was for as ground rent was paid directly to the landlord. Ms. Allison queried the figure for communal electricity at zero and stated she had not seen a copy of the entry phone contract but had seen invoices for the intercom and was prepared to accept them.

9. Ms Allison queried amounts spent on the health and safety reports and accepted £2,000 as reasonable but not the full amount claimed. Ms. Alison also accepted as reasonable the asbestos, fire protection and health and safety reports totalling £1,621. For 2007, Ms. Alison queried the communal electricity charge of £59.00 when previously it had been recorded as zero. Of the 0021-0031 invoices, only £852 was properly chargeable to the Applicants. A query arose as to whether the insurance payment, reflecting the damage to garage shutters, had been properly reimbursed to the service charge accounts. The builders working in the penthouse flats switching off the amplifier necessitated work to the aerials. Ms. Allison stated she did not know how the management fee was calculated. Ms. Allison stated that she had been made aware in 2001 that planning permission had been granted for two penthouse flats. However, the Applicants feel that they have been charged for the lift works and the new placement of the water tanks necessitated as a result of these two new flats. Further, there had been no notification of any adjustment to the service charge accounts as to the percentage each lessee was liable to pay.
10. At the beginning of the Respondent's evidence a request was made for an adjournment as the documentation for the service charge years of 2004 and 2005 was unavailable. Mr. Singh produced a revised budget for 2008, a copy of the bill for health and safety report and the contract for the entry phone system. Mr. Singh stated he did not know anything about revised service charges percentages in light of the two new flats built.
11. Mr. Singh told the Tribunal that the Respondent had taken over from the previous managing agent in mid-2005. He stated that management fees were charged at a flat rate with an annual increase of 3.5% and there had been no increases in 2006 or 2007. In 2006 only, the management fee had been undercharged and the difference was billed in 2008. Mr. Singh then stated that there was a basic management fee of £275 plus VAT per unit

across 2006 and 2007. He stated that a schedule of expenditure was sent out to the lessees but not a copy of the certified accounts.

12. Mr. Singh admitted the charge of £439.99 for a health and safety report was unreasonable due to a double payment in respect of the same or a similar item. He stated that the health and safety person employed by Mandells charges in advance and it his responsibility to makes sure the electrical circuits were satisfactory and deal with any issue arising out of the presence of asbestos. Mr. Singh could not explain why ground rent charges appeared in the service charge account but stated that the entry in 2006 was corrected in 2007.

13. In cross-examination Mr. Singh stated that he believed professional fees included payroll charges for the porter and £501 for payroll fees; £275 for management fees and the remainder was for health and safety fees all included under the heading Professional Fees. Mr. Singh was unable to explain the difference between the insurance premiums arranged by the previous managing agent and those by the Respondent and could not explain why the value of the building had increased so dramatically. He stated that no section 20 notices had been served in 2003 in respect of major works only that the works were going to be carried out.

14. Mr. Constad for the Respondent stated, that he had joined Mandells in April 2007, and stated he did not know why any sum for the roof works or the lift had been charged to the Applicants as the lessees should not have been charged for these. Mr. Constad was unable to assist the Tribunal as to the current state of the penthouse flats, whether they had been completed and whether they were now leased. He was unable to explain the modest, but nevertheless widely fluctuating electricity charge and could not explain why an outside health and safety person had been used when Mandells had its own in-house health and safety personnel.

The Tribunal's Findings:

Section 24(1)

15. The Tribunal noted that ostensibly there had been a change of managing agent from Hawksworth to Mandells in 2005, it appeared from the report and financial statements that both companies formed part of HML Holdings PLC. That being the case, the Tribunal would have reasonably expected to see that the incoming managing agent had access to, and should have been able to provide answers to the issues being raised by the Applicants. The Tribunal found the Respondent's evidence to be poor and in many parts, unpersuasive.

Service Charges

2003:

16. The Tribunal accepts the Applicant's evidence that section 20 notices were served in respect of the building/major works and that the sum of £39,500 is accounted for. Although, there is a remaining £4,000 the Tribunal is satisfied that the ledger entries, for smaller sums account for this outstanding amount. Therefore, the Tribunal is satisfied that these sums are reasonable and payable. As the professional fees were accepted by the Applicant as reasonable the Tribunal makes no decision on this point.

2004:

17. The Tribunal finds that the charges made for electricity and water, lift works, roller shuttering and outside lighting are reasonable and payable. The Tribunal finds the cost of the building work and maintenance has not been properly accounted for and therefore allows only the sum of £1014.10 (retention for 2003 works) but does not find the remaining sum reasonable, as

the Respondent has provided no evidence as to how this sum has been incurred.

18. The Tribunal finds some evidence that lift insurance costs were incurred and were not given any evidence to show that the lift had not been re-insured. Therefore the Tribunal allows this sum.
19. As the Applicant conceded the sum of £2,000 for pest control the Tribunal allows this sum as payable and reasonable. Similarly, as the Applicant accepted the sum for Professional Fess the Tribunal makes no findings on this item.

2005:

20. The Tribunal allows one-third of the costs claimed in respect of the lift repairs and maintenance; i.e. £1672.67, as the lift benefits the lower floors as well as the penthouse properties, the Tribunal considers it reasonable that some charge to reflect this is reasonable and payable by the Applicants.

2006:

21. Although a nil amount was claimed in respect of the electricity charges, the Tribunal are of the opinion, that the Respondent's inability to deal with this item was indicative of its general failure to properly understand and explain the service charges item or clearly how they were incurred or calculated.
22. The Applicants accepted the cost of the entry phone system and therefore, the Tribunal makes no finding on this item.

23. The health and safety associated costs included a number of charged items, and although the Tribunal is aware of the need to comply with such issues. However, the Respondent failed to provide information to identify the person involved in compiling the report or carrying out inspections or on the terms they were contracted. Therefore the Tribunal allows the sum of £3,712.06 in respect of these health and safety items, but does not allow the sum of £569.94.

2007:

24. The Tribunal allows the sum claimed for the cost of electricity to the communal parts as reasonable. The Tribunal accepts that work was carried out to the shutters but finds that the insurance sum of £5,798.25 should be deducted from the £8,872 claimed for this items. It was not at all clear to the Tribunal from looking at the Respondent's ledgers that this sum had in fact been reimbursed to the lessees through the service charges.

25. The Tribunal were not satisfied that the cost of the paladin bin clearance is properly chargeable to the lessees as this appeared to relate to works to the penthouse construction. Further, the Tribunal disallowed, as the Respondent agreed, the sum of £76.38 and £88.13 from the Shaw & Co. invoice of £4,021.23.

26. The Tribunal finds that the claim for management fees for 2007 included a balance figure in respect of the 2006 management fee, which had been incorrectly charged the previous year. The evidence as to what the management fee actually included was particularly unclear, and the Respondent was unable to establish whether it included the cost of the accountancy payroll preparation, or the health and safety aspect provided by the Respondent. The Respondent produced no management contract. Therefore, the Tribunal determined, that it was reasonable to add into the

management fee, the sums charged for health and safety (as provided by Mandalls), and the payroll costs under the term Management Fee in order to avoid a duplication of costs. However, the Tribunal finds the total of these costs are excessive and allows only 50% of the sums charged for 2006 and 2007.

27. The cost of the pest control was accepted by the Applicants and therefore the Tribunal makes no findings on this item. The Tribunal does find that the costs of the water monitoring reasonable and allows this sum in full.

28. The external maintenance costs have already been dealt with by the Tribunal above.

2008:

29. These are interim figures only and are therefore subject to adjustment in the final accounts. However, the Tribunal repeats the comments made above in respect of the reasonableness of the charges made and would hope that they are reflected in the final demands made on the lessees. The Tribunal notes that the issue as to the surplus fund was resolved in the documentation and therefore makes no finding on this.

Liability to pay:

30. The Tribunal finds that the Applicants are not liable to pay the demanded service charge sums until such time as they have been demanded in compliance with the terms of the lease and not as currently charged with a service charge year commencing on 25th December. The sample lease provided in respect of Flat 4, and about which the Respondent made no observations, states in the Third Schedule that the service charge year runs from 1st April to 31st March of the following year. On 25th March and 29th

September each year in advance the tenant is required to pay on account his proportion of the service charge based on the service charge estimate by equal half yearly payments. At the end of the service charge year the landlord is required to make up and furnish the tenant a statement of expenditure and certificate of service charge liability certified by Chartered Accountants. Any excess shall be credited to the tenant's benefit; (*clause 3.2 Third Schedule*).

31. The Tribunal was surprised to note that the Respondent appeared unaware of the express terms of the lease, and failed to check on them when it took over the management of this block of flats. The Tribunal also expect to see any excess sums credited back to the lessees in accordance with the lease terms and not retained by the Freeholder or other person or entity. Further, in view of the addition of two new penthouse flats, the Tribunal expects there to be an adjustment to the percentages paid by the leaseholders to the service charges in order to avoid an excess of 100% being charged to the current leaseholders in respect of service charges.

Section 20C Costs:

32. In light of the findings above the Tribunal does not find it reasonable to allow the costs of this litigation to be added to the service charges. However, the Tribunal does find it reasonable to direct that the Respondent reimburse the Applicant with the application fee and awards the maximum it is able of £500 to the Applicants (listed in full at Appendix I), payable by the Respondent to reflect the chaotic and inexplicable conduct of the service charge accounts and the Respondent's inability to present to the Tribunal a full and coherent explanation for all the items challenged.

Chairman: LM Tagliavini

Dated: 31/1/09

PROVOST COURT, ETON ROAD, LONDON NW3 4SR

List of Applicants

Mrs Chiharu Gillies,	1 Provost Court
Ms S Welbourn	2 Provost Court
Ms Susan Kay Allison	4 Provost Court
B J Shapiro	6 Provost Court
Mrs Patricia Ray	7 Provost Court
Asten Properties Ltd	8 Provost Court
N F Spiegel	9 Provost Court
Evi Wohlgemuth	10 & 11 Provost Court
Ms Naomi Cambridge	12 Provost Court
Ms Sophie Sharp	14 Provost Court
Yael and Dov Kol	17 Provost Court
Ms Pamela Millard	18 Provost Court
Mr S Taylor & Ms H Gough	19 Provost Court
Mr Clive Truman	21 Provost Court
Mr and Mrs C Bailey	23 Provost Court
Ms Pauline Simond	24 Provost Court
Mr David Raviv	25 Provost Court

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

RENT ASSESSMENT PANEL

LEASEHOLD VALUATION SERVICE

LANDLORD AND TENANT ACT 1987 – SECTION 24

LANDLORD AND TENANT ACT 1985 – SECTION 20C

LON/OOAG/LSC/2008/0331

Premises: Provost Court, Eton Road, London NW3 4SR

Applicant: Ms. Susan Kay Allison & other named lessees (as set out in list attached).

Represented by: Ms. S Allison

Respondent: Gauld Properties Limited

Represented by: HML Hathaways (formerly known as HML Mandells), managing agents.

Hearing date: 4th June 2009

Tribunal: Ms. LM Tagliavini, LL.M, DipLaw, BA Hons
Mr. I Thompson, BSc, FRICS
Mrs. L Walter

1. This is an application made pursuant to section 24 of the Landlord and Tenant Act 1987 seeking the appointment of a Manger, namely Mr. Paul Davison of Dillons Property Management for a period of three years. The subject premises are a purpose built block of 24 flats (not including the two penthouse additions). The lessees of 18 of the flats in the building joined as Applicants to the application. An email dated 27/11/08 from the freeholder, Mr. Gauld of Gauld Properties Limited to Ms. Alison indicated, "I have no objection to a change of managing agents as stated in your letter".

Application for an adjournment

2. However, by a letter dated 2nd June 2009, the Respondent, through its managing agents requested an adjournment of the hearing on the grounds that they had not received notice of the hearing date. The request was refused and a second request was made by letter-dated 4th June 2009, repeating that notice of the hearing had not been received. This letter was signed by HML Hathaways managing agents on behalf of Mr. S Gauld – freeholder. This application was considered at the hearing at which the Respondent failed to appear or send representation. The Tribunal noted that on 2nd April 2009 a pre-trial review had been held at which the Respondent had been represented by Mr. Conway of HML Hathaways. Suitable dates for hearing were canvassed with the parties and included the 4th June 2009. Directions dated 2nd April 2009 were sent to the parties on the same day and were clearly headed "Hearing Date: 4th June 2009". This information was repeated in the main body of the Directions. In those directions, the Respondent was required to serve a response to the application by 7th May 2009 (amended to 14th May), and on 6th May 2009 a Reply was sent to the Tribunal. The Tribunal has checked for any errors in the address of the directions sent to the Respondent's managing agent, and can see none. The Respondent or its managing agent made no queries

of the LVT when directions were not received or a hearing date notified.

3. The Tribunal considered carefully the application for the adjournment but reached the conclusion it was reasonable and proper to dismiss it. The Tribunal found that the Respondent's managing agent had been present at the pre-trial review when dates for the hearing were canvassed and included the 4th June; the directions including that date were sent out on the 2nd April 2009; no communication was received from the Respondent that the 4th June was unsuitable; a Reply was received on 6th May 2009 opposing the application. The Tribunal finds that the Respondent and its managing agents were notified of the hearing date in a timely fashion. The Tribunal is satisfied that the Respondent and its managing agents have been well aware of this application and finds on the balance of probabilities the directions were received notifying the hearing date. Further, the Tribunal noted that on 20th April 2009, Ms. Allison sent to Ms. Green and Mr. Conway copies of the documentation it was intended to rely upon at the hearing. Further, the Tribunal was noted assisted by the absence of any explanation by the Respondent or its managing agents as to why the directions might not have been received, or any submission made on any prejudice caused to the Respondent, and the failure of the Respondent or the managing agents or any representative to appear at the hearing to apply for and explain in person the reasons for the adjournment application. Therefore, the Tribunal determined that, in all the circumstances it was fair and reasonable to proceed with the hearing of the application, particularly having regard to the long running disputes in respect of this Property and the inconvenience caused to the Applicants in not having this matter resolved at the earliest date..

4. By an application dated 5th February 2009, the Applicants sought the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987. This application had earlier been adjourned when made initially in 2008, together with an application pursuant to section 27A of the Landlord and Tenant Act 1985, the latter having been heard and determined by the same Tribunal in November 2008. The details of the proposed manager, Mr. Paul Davison of Dillons Management Limited were provided, together with a letter dated 27th January 2009 detailing the experience and qualifications held, together with the proposed terms and remuneration together with a statement of the services to be provided. It was asserted that the structure of the building is suffering as a result of a lack of maintenance and the continued slack approach to managing the block in both financial and physical aspects makes it desirable to rectify the mismanagement as quickly as possible. A section 22 notice dated 22nd December 2008 set out the grounds on which the appointment of a manager was sought and the various breaches that had occurred or were continuing:

- (i) Breach of repairing covenant as per leases;
- (ii) Breach of Landlord and Tenant Act 1985 in not providing tenants with an up-to-date insurance policy and underinsurance of the property resulting in problems with a claim made with regard to water damage;
- (iii) Not providing certified accounts to tenants within prescribed time (2003 accounts were five years later, 2005 and 2006 two years late in being received despite requests for the same);
- (iv) Unreasonable and unlawful service charges having been made (dealt with in an earlier LVT decision);
- (v) Breach of Service Charge Residential Management Code in respect of 9.7 budget/estimating; 11.5. Accounting for service charges; 14.2 repairs – duty of reasonable care.

5. It was said that despite the addition of two new penthouses, (owned by the freeholder) the proportion of service charges payable had not been amended to reflect this.

6. The notice served pursuant to section 22 detailed the lack of repair which although identified in a Health and Safety Report in 2006, had still not been rectified; the lack of a reserve fund although provided for in the lease and other service charge issues; insurance policy and issue on under-insurance and other items concerning the porter and proper running of the building. An acknowledgment of this letter was sent to Ms. Allison from Ms. Suzanne Green, Head of Property Management, HML Hathaways. The Tribunal noted that this letter of acknowledgement was headed HML Mandells, thereby continuing to cause confusion, despite the Respondents' assertion that HML Mandells had been rebranded HML Hathaways.

7. The Respondent did not appear and was not represented but by a letter dated 6th May 2009, sought to respond to the Application made. Opposition to the appointment of a manger was made on the grounds that;
 - The Residents' Association was not registered at Companies House.
 - They believed the appointment of a manager was to act as the freeholder for a period of a year;
 - The original section 24 application had been retracted;
 - They did not understand the Applicant's application;
 - Dillons is estate agent based rather than property management;
 - They have less staff than HML Hathaways;
 - They would be acting in the same role as HML Hathaways as managing agents;

- They have only £1,000,000 insurance as opposed to £3,000,000 held by HML Hathaways;
- Matters have improved since Ms. Green, Head of Property Management had taken over;
- Some lessees are satisfied with the current managing agents;
- Action has been taken since the service of the section 22 notice;
- All works have been undertaken (subject to the collection of service charge arrears);
- The water damage claim has been settled by the insurance company;
- Copies of the insurance policy are supplied to lessees;
- There has been no delay in providing service charge accounts since HML Hathaways took over;
- The sums awarded by the LVT have not been credited to the lessees account because the figures are not accepted and HML Hathaway's wishes to rely on new evidence not produced at the hearing in order that the LVT may reconsider its decision.
- The service charge estimates take account of unforeseen circumstances
- The applicants have unreasonable expectations as to the level of service charges likely to be due at year end;
- Repairs have been tendered for and carried out when funding has been made available;
- No variation to the service charge percentage payable to reflect the addition of two new penthouses has yet been implemented. This will be backdated to the date of NHBC certification in due course.

8. Ms. Alison told the Tribunal that since Ms. Green had taken over from Mr. Constad, the insurance claim had finally been dealt with in respect of the water damage. It was accepted that a parking scheme had been put in place, although this was felt not to be entirely satisfactory as the lessees had asked for a specific sort of scheme to take into account the nature and extent of the parking needed but instead has a 'one size fits all' scheme. However, there had been no significant repairs to the common parts carried out and the lift remained a sporadic problem. There was no emergency alarm in the lift and doors took a long time to

close. Ms. Allison told the Tribunal that there was still water ingress from the balcony which was an ongoing problem.

9. Ms. Allison also told the Tribunal that service charge bills were still being sent out at the wrong time and not in accordance with the terms of the lease. She had received her bill in January instead of March and little had been done to redress the award made by the Tribunal in November 2008. No accounts had been produced for 2007/08.
10. Although not a registered company, there was a recognised Resident's Association and had been for some time. The Respondent's assertions that there was not such a recognised resident's association were not understood. Service charge accounts for 2005 had been provided by way of an unsigned draft, 2006 was signed but not dated, 2007 was neither signed or dated. A copy of the insurance policy had been requested but not provided and there remained a concern that the Property continued to be underinsured. A porter had been employed since March 2009, but the lessees were not aware of the terms of the employment, the hours, the employer or remuneration. The LVT's decision had not been implemented.
11. In looking for a manager, Ms. Allison told the Tribunal that they looked at the provisions of the Management Code published by RICS. It was known that Dillons manages the block of flats opposite to Provost Court and references were obtained. The Tribunal was also told that Dillons had previously managed the subject Property, but when Mr. Gauld had acquired the block along with a number of other properties, he had looked for a 'cheaper option'. Mr. Paul Davison, on questioning by the Tribunal stated that Dillons followed RICS and NEA codes of conduct and was aware of the update to the RICS Code.

He was aware that the terms of the leases control and should be properly applied in the collection of service charges

12. In reaching its decision the Tribunal gave careful consideration to section 24 of the Landlord and Tenant Act 1987 and the requirements set out. The Tribunal was satisfied that these had been made out on a number of bases, namely that there continues to exist breaches of the obligations owed to the lessees under the terms of the lease by reason of the incorrect service charge periods being used; the lack of maintenance and repair; the unreasonable service charges levied and as determined in the LVT decision dated 31/1/09; *ref LON/00AG/LSG/2008/0331*, (as amended on 17/2/09); the failure to refund unreasonable service charges in accordance with the LVT determination and the lack of certified service charge accounts provided in a timely manner, if at all;

13. Further, the Tribunal notes that despite the apparent 'rebranding' of HML Mandells as HML Hathaways, there appears to have been little material change to the chaotic and unprofessional approach demonstrated in the previous application for the determination of the reasonableness of service charges made to the LVT. This despite having an extra period of time in which to remedy the concerns raised by the Applicants and the adjournment of this application, first made in 2008. Further, the Tribunal were concerned to note the lack of understanding demonstrated by the Respondent's managing agents as to the nature and effect of an order made under section 24, as well as the complete disregard shown to the Tribunal's previous decision and its implementation.

14. For all of the reasons outlined in the above paragraphs, the Tribunal is satisfied that it is just and convenient in all the circumstances of this

case to make an order for the appointment of manager. Further, having heard from Mr. Davison in person and had the opportunity to ask questions of him, the Tribunal is satisfied that he is a fit and proper person to be appointed as manager of the Property and determines that a period of two years is appropriate in the circumstances of this application. The Tribunal makes the order for the appointment of a manager as appears attached to this decision.

15. In light of the Tribunal's findings and decision, the Tribunal considers that it would not be just and reasonable in all the circumstances of this case to allow the Respondent to add the costs of this litigation to the service charges pursuant to section 20C Landlord and Tenant Act 1985.



Chairman: LM Tagliavini

Dated: 6th July 2009

RE: PROVOST COURT, ETON ROAD, LONDON NW3 4SR

ORDER OF THE LEASEHOLD VALUATION TRIBUNAL APPOINTING A
MANAGER

1. The Tribunal appoints Mr. Paul Davison, MNACA of Dillons Property Managers, 619 Holloway road, London N19 5SS as Manager of Provost Court, Eton Road, London Nw3 4SR ("The Property") for a period of 2 years with effect from 31st August 2009.
2. HML Hathaways (formerly known as HML Mandells) must by 31st July 2009 transfer to Mr. Davison all funds relating to The Property, together with a statement showing all income and expenditure in respect of the property since 1st January 2008 to include a copy of draft accounts for the period January 2008 to December 2008 and summarise all further expenditure and income for the period January 2009 to end July 2009.
3. The Manager shall collect all service charges, or other funds allowed for and in accordance with the terms of the leases of the subject property or any other direction, decision or order.
4. All monies transferred to the Manager and collected or received throughout the term of the Manager's appointment are to be held in the appropriate bank accounts opened in respect of The Property.

5. The Manager is entitled to receive all past and future report; bank statements, invoices, accounts and all other documents that concern the management of the property whether from HML Hathaway's (formerly known as HML Mandells, its solicitors, accountants, agents or employees.
6. Such documents must be provided to the Manager within 14 days of any request whether made orally or in writing.
7. During the period of the Manger's appointment, the manager shall collect all the various funds and any reserves made payable by the Lessees in the respective Leases of the flats, and including the two new penthouse flats in the Property in accordance with the terms of their leases, and including but not limited to;

Insurance

Service charges

and the arrears of any of the above, and is permitted to take all and any necessary steps to collect the same.

8. To ensure the proper management of the Property and its service charge account, the Manager shall be entitled to receive within 14 days of any written request, all reports, bank statements, invoices, accounts and all other relevant documentation relating to the Property in the possession or control of

HML Hathaways (formerly HML Mandells), and their solicitors, accountants, employees or agents.

The Lessees.

9. During the period of his appointment the Manager shall carry out the management obligations in accordance with the terms of the Leases held on the Property and shall include ;


- (i) The establishment of the current balance in the Service Charge and Reserve Accounts for the Property;
- (ii) Appoint an independent firm of accountants to undertake a review of the service charges for the years ending 31 December 2008 and 31 December 2009
- (iii) Provide the Treasurer of the Provost Court Residents Association with access to a detailed summary of expenses and documents provided by HML Hathaway's and assist, as necessary in any further proceedings before the Leasehold Valuation Tribunal.
- (iv) Provide the accountant's written report and any recommendations as to the future management of the Service Charge and Reserve Accounts together with any revised service charge budget for the year ending 31 December 2009 no later than 31 August 2009, together with any revised service charge bills for the period ending 31 December 2009, paying particular regard to any differing service charge accounting periods as set out in the Leases.
- (v) Ensure that the Property is fully and properly insured.
- (vi) Investigate the terms of the Porter's contract of employment and ascertain whether it provides value for money and provides for sufficient services to be provided in the management of the Property and if necessary to renegotiate the terms of the contract, if any.
- (vii) Draw up a programme for planned maintenance of the Property to include work and maintenance of the lift, the cutting back of trees, siting of refuse, identifying short-terms and long-term

items of repair and redecoration including the exterior of the building and the common parts.

(viii) In carrying out his duties the Manger shall comply with all statutory requirements and the relevant residential Code of Management published by the RICS and shall properly account for all monies received and which are properly due to the Landlord.

10. The Manager shall be entitled to charge the sum of £295.00 plus VAT per unit and disbursements per year by way of basic management fees to cover those day to day duties referred to in the RICS Code of Management together with necessary disbursements for day to day duties referred to in the RCIS Code of Management and shall include the supervision of minor works of repair and maintenance.
11. The Manager shall be entitled to receive a separate fee of 10% (plus VAT) of the final contract price for the organization and supervision of major works.
12. The Manager is entitled to receive £250 (inclusive of VAT) or 1% plus VAT of the final contract price for the preparation of section 20 consultation notice pursuant to the Landlord and Tenant Act 1985 where supervision of the relevant works is not carried out by the Manager.
13. The Manager shall be entitled to engage, any Surveyor, Architect Engineer or other appropriate person to assist him in his duties as Manager and will be entitled to recover their cost from the Lessees through the service charge provided such costs are reasonable and reasonably incurred and the work of the appropriate standard.

14. The Manager is at liberty to apply to the Leasehold Valuation Tribunal for any further directions required.
15. The appointment of a Manager to commence on 31st August 2009 until 31st August 2011.


Chairman: LM Tagliavini

Order made: 6th July 2009

PROVOST COURT LEASEHOLDERS
ETON ROAD, BELSIZE PARK, LONDON NW3 4SR
APPLICANTS/INTERESTED PARTIES

FLAT No:	NAME
1.	Mrs. Chiharu Gillies
2.	Ms Sally Welbourn – Chairman of Residents Association
4.	Ms Susan Allison - Treasurer of Residents Association
6 & 8.	Philip Shapiro
7.	Mrs. P. Ray
9.	Mr & Mrs. Spiegel
10 & 11.	Mrs. E. Wohlgemuth
12.	Ms Naomi Cambridge & Serena Sharp
14.	<i>Ms Sophie Sharp</i>
17.	Mrs. Yael Kol
18.	Mrs. P. Millard
19.	Miss Hanna Gough – Secretary of Residents Association
21.	Regal Estates Contact: mandy@regal-homes.co.uk
23.	Mrs Chris Bailey
24.	Mrs. P. Simond
25.	Mr. D. Raviv